

Case No. 2:23-CV2130

PAUL BURMASTER
Defendant

Comes now, Plaintiff Matthew Escalante, by and through his own counsel respectfully shows this Court the Following Facts:

Background

2. On March 20, 2023, Johnson County Judge Paul W. Burmaster issued Document

262 in the high conflict custody case of 18-CV03813. Doc 262 was titled "Order Restricting

Matthew Escalante's Contact With the Court". The content of Doc 262 is irrelevant at this point as to whether was fact or fiction, as the Plaintiff still contends to its fiction.

3. The placement of this motion is Timely. FRCP Rule 60(c) Timing: No more than One year can a motion be placed pursuant to Rule 60. The Judgement of Burmaster I, came on June 6th 2023. This action is timely.
4. FRCP 60(b)(1) states court to relieve a party from a final judgment, order, or proceeding for various reasons, including "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1)
5. Document 262 contains a Large Legal Error of Law, and the error of Law is depriving Constitutional Rights of the Plaintiff.
6. The U.S Circution Courts of Appeal have had a "longstanding disagreement whether 'mistake' in Rule 60(b)(1) includes a judge's errors of law." Kemp v. United States, 142 S. Ct. 1856, 1861 & n.1, 213 L. Ed. 2d 90 (2022). Resolving that question in Kemp, the U.S. Supreme Court held, based on the text, structure, and history of Rule 60(b), that "a judge's rrors of law are indeed 'mistake[s]' under Rule 60(b)(1)." Id. at 1860. In so holding, the Supreme Court indicated that the term "mistake" in Rule 60(b)(1) should be given its broadest possible interpretation to include any mistake, including "all mistakes of
7. The Mistake that is Depriving Constitutional Rights of Plaintiff, still, is found page 2 of the Johnson County District Court Document 262. The Order Restricting Filing does not have an Expiration Date was to when Filing Restriction become lifted.
8. Kansas Supreme Court compiled the Summary of Authorities for Judges to Consider Whether or Not To Restrict Filings. They gave several caselaw pertaing to a document like 262.
9. Kansas Prior Ruling in Lynn, 26 Kan. App. 2d at 82. Stated that any Order Restricting Fllings must have 5 provisions. And as summarized in the Summary of Authorities Letter (e) the length of time the restrictions will be in place,"
10. Doc 262 does not contain an Expiry date. It is infinite. And prior Kansas ruling in 26 Kan. App 2d at 82 says that it can't be infinite.
11. An affirmative is visible that Doc 262 is without jurisdiction because of the above facts. The Docket of 18CV03813, exhibit 2, shows the Plaintiff moving freely underneath of it and its still in place. The Court of Johnson County also knows that it is without jurisdiction and technically non enforceable because they're. unable to enforce it. And its visible when Chief Judge Droege indicates the filings by email Plaintiff is sending.

12. The Plaintiff brings this Motion pursuant Rule 60 because it is timely, proper and its the only option.

As the Exhibit 1, case record of 18CV03813, has a 'blanket filing' placed over the Plaintiff and Chief Judge of the District Court has stopped all filings of the Plaintiff counter to Prior Kansas Court rulings in that Blanket restrictions that prohibit all pro se filings are not permitted *Lynn v. Anstaett*, No. 108,568, 2013 WL 5422344, at *3 (Kan. Ct. App. Sept. 27, 2013) (*Lynn 3*), citing *Holt*, 290 Kan. at 499-501 That Blanket Restriction is preventing Due Process entirely and can't per those case mentioned. And the Document 307 is that Chief Judge is stating in docket mentions of 18CV03813, is also void. Document 307, contains a custodian Livingston Counseling LLC, and Dan Livingston contacted Charles Droege and directed him to amend the Doc 307 because they were disqualifying themselves from 18CV03813. So the Above FACTS show that the mechanism that Droege is stating will allow Due Process, is not a valid mechanism. And the totality of the 'blanket restrictions' show that Plaintiff actually can never get to Court of Appeals because the Johnson County Ct. has removed Due process entirely.

13. This motion for Relief of Judgement of 2:23-CV2130 is properly placed as the case of *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954) this Court has held that the Federal Court holds jurisdiction to enforce the 14th Amendment Equal Protection Clause, as it should be seen by a Fair and Impartial court that the 10th district and document 262 is deprive the plaintiff of the equal protection of the due process that is supposed to have as a citizen. But the above numbered point 12, shows the Unjust removal of Due Process, and that is counter to the Constitutional citation of 14th in "It ordains that no State shall deprive any person of life, liberty, or property, without due process of law, or deny to any person within its jurisdiction the equal protection of the laws.

14. The only authority per prior Kansas CaseLaw that Droege, Burmaster and the 10th district hold is governed by the provisions and rulings in *Lynn*, 26 Kan. App. 2d at 82, *Lynn v. Anstaett*, No. 108,568, 2013 WL 5422344, at *3 (Kan. Ct. App. Sept. 27, 2013) (*Lynn 3*), citing *Holt*, 290 Kan. at 499-501 The Defendant Burmaster or Defendant Droege cannot shut off Due Process entirely in the civil court. But they are, and Document 262 is the largest contributor.

15. The plaintiff asks this court to view the Document 262 and its non compliance with prior higher court rulings in Kansas, and to Vacate the Judgement made in this proceeding and to terminate the Document 262 as it is counter to the Precedent set in Kansas for gag orders without an expiration date. To remain impartial and Fair, this federal judiciary should see they cannot have knowledge of a depriving, non-jurisdiction, and void Document 262 continue to lie over the Plaintiff. To leave the Order in Place would be discriminatory or

or prejudice in appearance. Everything that this Federal court stands against.

Please enforce the equal protection clause of the 14th amendment of the facts presented and offer relief please that is due for Document 262 that is without juris or authority.

WHEREFORE plaintiff shows the Facts not opinions that are in this motion that a Error of Law has been made and its depriving largely of protected Constitutional Rights, and the Restrictions in place are prohibiting from Plaintiff from getting into Court of Appeals for relief. Pl moves for relief under Fed. R. Civ. P. 60(b), which permits a district court to relieve a party from a final judgment or order on the following grounds:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(4) the judgment is void; Relief under Rule 60(b) is “extraordinary and may only be granted in exceptional circumstances. And this High Court has held prior in 10-20009-JAR U.S vs Tombs, United States v. Toombs, 717 F. App’x 796, 800 (10th Cir. 2017). “Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error that made a substantive mistake of law or fact in the final judgment or order.”⁵ where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard.³ “[A] void judgment is one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final.”⁶⁴

Plaintiff shows this is an extraordinary rare circumstance where this High Court overlooked accidentally that Document 262 is counter to the Prior Kansas Case laws. Therefore this Motion defies the doctrines of Res Judicata and Collateral Estoppel, And to be consistent with the Kansas Supreme Court

Document 262 must please be vacated, in the Interest of Justice and Due Process Equal Protections. Please provide the vacate of document 262 that would be granted to any other person or litigant or Attorney in this instance. T.Y.

Respectfully Sent



Matthew Escalante
733 Hemlock St
Gardner KS 66030
Phone 913-286-2250
Fax no fax
Email eskie678@aol.com

CERTIFICATE OF SERVICE

I certify this factual supported motion for relief pursuant Rule 60 was filed electronically via CM/ECF which sent a copy to the Magistrate and presiding Judge of this Federal Proceeding.
on March 1st 2024

262 in the high conflict custody case of 18-CV03813. Doc 262 was titled "Order Restricting Matthew Escalante's Contact With the Court". The content of Doc 262 is irrelevant at this point as to whether was fact or fiction, as the Plaintiff still contends to its fiction.

3. Irrelancy to the placement of this next to reason why prior Kansas higher court rulings dem

CERTIFICATE OF COMPLIANCE

I hereby certify that the Motion For Relief of Judgement Pursuant Rule 60b was filed electronically, to offer the Gardner Police Dept the needed relief of suppression that void order doc 27 is producing that the GPD believes they must enforce, and no juris is held. They are owed relief on this matter. This was sent by CM/ECF transmission to all parties in proceedings by server of PACER on 2/21/24

12/5/23, 5:50 PM

CASE HISTORY (ROA)

Case 22CV03391 **Caption** ESCALANTE vs. ESCALANTE
Chapter 60D **Nature** PROTECTION FROM STALKING
Status TERMINATED **Judge** OUT OF COUNTY JUDGE
Division OC

EXHIBIT
A

[Search](#) [Case History \(ROA\)](#) [Plaintiff/Defendant](#) [Court Events](#) [Other Cases](#) [Documents](#)

[Sort By Ascending Order](#)[Sort by Descending Order](#)[Print Friendly](#)[E-File On Case](#)

11/16/2023	<***** Bench Notes *****> BY ORDER OF THE CHIEF JUDGE THIS CASE IS TRANSFERRED TO AN OUT OF COUNTY JUDGE FOR THE PURPOSE OF DOCKET AND CASELOAD MANAGEMENT(JUDGE: DROEGE)	
11/16/2023	Judge OUT OF COUNTY JUDGE assigned to case	
10/18/2023	FILE STAMP 10/18/23, NOTICE TO THE COURT	DOC(30)
10/16/2023	FILE STAMP 10/13/2023, MOTION TO INTERVENE	DOC(29)
10/16/2023	FILE STAMP 10/13/2023, MOTION TO MODIFY PROTECTION FROM STALKING, SEXUAL ASSAULT, OR HUMAN TRAFFICKING ORDER	DOC(28)
08/10/2023	<***** Bench Notes *****> PETITIONER APPEARS WITH COUNSEL, C. WILSON IN PERSON. DEFENDANT APPEARS PRO SE IN PERSON. AT ISSUE, MOTON TO EXTEND PFS 3 YEARS. COURT HEARS ARGUMENT AND REVIEWS ADMITTED EVIDENCE. COURT FINDS BASIS TO EXTEND. GOOD CAUSE SHWON. PFS EXTENDED 3 YEARS. DEFENDANT SERVED. DEFENDANT MAY NOT EMAIL PETITIONER'S COUNSEL UNLESS TO SEND A PLEADING. ALL OTHER CORRESPONDENCE TO BE BY MAIL. DEFENDANT MADE A REQUEST PURSUANT TO KSA 77-525. THAT STATUTE APPLIES TO ADMINISTRATIVE PROCEDURES AND NOT THE JUDICIAL BRANCH PER 77-502(A).(RPTR: RECORDING)(JUDGE: BURMASTER)	
08/10/2023	FILE STAMP 08/10/2023, SHERIFF RETURN JO CO KS, FINAL PROTECTION STALKING ORDER SERVED CONFIDENTIAL	DOC(27)